



1  
2 resulted in this adversary proceeding.

3       Even on the record as it stands, this case is replete with  
4 genuine issues of material facts that preclude entry of summary  
5 judgment. Under the Federal Rules of Civil Procedure, rule 56( C),  
6 a moving party may prevail on a motion for summary judgment only if  
7 it "show[s] that there is no genuine issue as to any material fact  
8 and that the moving party is entitled to judgment as a matter of  
9 law." A fact is "material" if it "might affect the outcome" of a  
10 case. Anderson v. Liberty Lobby, 477 U.S. 242, 248 (1986). The fact  
11 here, is that all evidence establishes that Defendants were not  
12 eligible bidders because they were corporate bidders. As corporate  
13 bidders, Defendant's failed to adhere to the new law requiring  
14 notice and opening up the bidding for 15 days before the sale can  
15 become finalized. This did not happen.

16       Moreover, all submitted evidence clearly states that the sale  
17 took place at the foreclosure sale and sold on that same day. There  
18 are no indication of a pending offer, pending bid, but rather it  
19 claims the property was sold on the foreclosure date and the notice  
20 postings reflected as much, thereby discouraging potential eligible  
21 bidders from placing a bid.

22       Finally, while it is true, that there is no affirmative duty  
23 for corporate bidder to list the house for the homeowner or  
24 advertise the property for eligible bids, to act in the exact  
25 opposition by discouraging eligible bidders is a violation of the  
26 law. That is, announcing to the public that the house sold on the  
27 day of the foreclosure sale runs counter to the legislative intent  
28

1 of California Civil Code Section 2924m. This will be further  
2 analyzed in the Memorandum of Points and Authorities in support of  
3  
4 this opposition that is submitted with this motion.

5  
6 Dated: December 31, 2024

Law Offices of Peter G. Macaluso

7 By: /s/Peter G. Macaluso  
8 Peter G. Macaluso,  
9 Attorney for Plaintiff  
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO

IN THE MATTER OF CASE NO: 23-21965

Ayanna Spikes ADV. NO: 23-02111

DCKT.NO: SC-01

Debtor. /

Ayanna Spikes

DATE: January 22, 2025

TIME: 10:00 a.m.

Plaintiff,

DEPT: C - Courtroom 35

v.

HON. JUDGE CHRISTOPHER KLEIN

Quality Loan Service Corp.,  
Breckenridge Property Fund.  
Shellpoint Mortgage Servicing,  
ISN Corporation, et al.,

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF OPPOSITION TO  
BRECKRIDGE PROPERTY FUND,  
2016, LLC. MOTION FOR SUMMARY  
JUDGMENT**

Defendants. /

Plaintiff, Ayanna Spikes, hereby submits this Memorandum of  
Points and Authorities in Opposition to Defendant, Breckenridge  
Properties Fund, 2016, LLC. ("Breckenridge") Motion for Summary  
Judgment, for reasons set forth below which evidences that there  
are genuine triable disputes as to material facts, and that if  
anyone is entitled to judgment as a matter of law, it would be



1 Plaintiff. It was Defendant's failure to adhere to the California  
2 Civil Code Section 2924m(e)(1) which caused Defendants to violate  
3 the automatic stay in any attempt to finalize and perfect the sale  
4 of Plaintiff's home. As a result, this caused Defendants to violate  
5 the automatic stay further when they knowingly and willfully  
6 removed and displaced Plaintiff from her home which resulted in  
7 this adversary proceeding.

8 **I. STANDARD OF REVIEW**

9 A moving party is only entitled to summary judgement if it  
10 shows that there are no genuine disputes of material facts that  
11 exist....Fed R. Bankr.. 7056, Fed.R.Civ.P.56(a). A fact is only  
12 material if it might affect the outcome of the suit under governing  
13 law. A court deciding whether to grant a motion for summary  
14 judgment must view the facts in the light most favorable to the  
15 non-moving party, drawing any reasonable inferences in that party's  
16 favor. Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986).

17 **II. MATERIAL FACTS IN DISPUTE**

18 A. Whether Defendants, a corporation, properly adhered to the  
19 post-sale notice of foreclosure in the manner and form prescribed  
20 by California Civil Code §2924m(e) when the sale was posted as sold  
21 on the date of the foreclosure sale and actually was sold to a  
22 Defendant Breckenridge that same day.

23 B. Whether the filing of a bankruptcy petition by the  
24 homeowner on the day of the foreclosure sale and before the sale  
25 was finalized voids any attempt to finalize or perfect the sale,  
26 post-petition because it violates of the automatic stay.

27 //

1 C. Whether a Debtor whose home was subject to a foreclosure  
2 sale who filed bankruptcy within a day, maintains equitable title  
3 that becomes property of the estate and subject to bankruptcy  
4 protections.

5 D. Whether Defendant, Breckenridge Property Fund, 2016, LLC,  
6 a corporation that purchases foreclosure homes, qualified as a Bona  
7 Fide Purchaser.

8 **III. ARGUMENT**

9 **A. PURSUANT TO CALIFORNIA CIVIL CODE §2924m(e) (1), WHERE A**  
10 **CORPORATE BIDDER IS THE HIGHEST BIDDER AT A FORECLOSURES SALE, THE**  
11 **ACT OF POSTING NOTICE WITH THE FALSE CLAIM THAT THE SALE WAS FINAL**  
12 **ON THAT DAY IS A FAILURE TO PROPERLY ADHERE TO THE CONDITIONS SET-**  
13 **FORTH IN THE LAW TO FINALIZE A FORECLOSURE SALE.**

14 Pursuant to California Civil Code §2924m(e) "[i]f conditions  
15 set forth in paragraph (1) of subdivision ( c) requiring that the  
16 purchaser must be an eligible bidder, that is one that intends to  
17 be an owner-occupied buyer and not a corporate bidder in order for  
18 a sale to be deemed final are not met, then there are conditions  
19 that must be adhered to for a sale to become final for corporate  
20 bidders such as Defendants.

21 Cal. Civ. Code §2924m(e) states that not later than 48 hours  
22 of the trustee's sale, the foreclosing trustee must post facts on  
23 the internet website set forth in the notice of sale: (1) the date  
24 on which the foreclosure sale took place (2) the amount of the last  
25 and highest bid at the sale; and (3) an address at which the  
26 trustee can receive documents sent via U.S. mail and overnight  
27 delivery. If no bids or notices of intent to bid are received by  
28

1 the foreclosure trustee by the 15<sup>th</sup> day, then the window for  
2 prospective eligible bidder under *Senate Bill 1079* closes." In re  
3 Hager, 651 B.R.873 (Bankr.E.D.Cal.2023). At this time, only after  
4 required notice posting is met does the sale become final on the  
5 15<sup>th</sup> day after the non-judicial foreclosure sale. That is, provided  
6 the conditions of §2924m(e)(1) are met.

7 In this case, the property was sold to Breckenridge, a  
8 corporation at the foreclosure sale which requires that the  
9 conditions set-forth in California Civil Code §2924m(e) be met in  
10 order for the sale to become finalized. Defendants, the trustee  
11 and/or authorized agent, working in concert, failed to meet the  
12 requirements placed upon non-owner-occupants as set-forth by the  
13 most recent law. As such, while the notice of a final sale was  
14 posted within 48 hours of Breckenridge placing their bid, the  
15 Defendant's posting was merely a false claim that the sale was  
16 final on June 15, 2023, (See Defendant's Motion, Exhibit G,  
17 Dckt.76 and Exhibit F, Dckt. 76) which is the date of the  
18 foreclosure sale itself. This notice is deceptive at best and  
19 does not rise to the level of noticing eligible bidders of an  
20 opportunity to bid, but rather discourages it. In fact, in this  
21 pertinent evidence, the *transmittal date* of the posting relied  
22 upon by Defendants is from a Quality Loan Serving post on June  
23 15, 2023, the day of the foreclosure sale. This language is  
24 explicit and clear in the post on their website of a "Sold Date"  
25 of 6/15/23, a "Winning Bid" of \$320,000 and that there were no  
26 Intent to Bid received on that same day. (See Defendant's Motion  
27 to Dismiss, Dckt. #28 & 44).

1       As a result, no notice of the sale being open for bids were  
2 given to prospective eligible bidders and naturally, Breckenridge  
3 remained not only the highest bidder, but the only bidder. While  
4 Breckenridge is correct in their pleadings that no eligible bidders  
5 came forward, they fail to acknowledge the reason that this  
6 happened or provide any evidence to the contrary. Instead, they  
7 claim only that after the fifteen (15) day window closed and the  
8 deed was recorded and the sale finalized. This is simply untrue.  
9 Defendants, in unison, knowingly made a false claim that the sale  
10 was held and finalized on the day of the foreclosure sale and they  
11 successfully discouraged eligible bidders from placing a bid which  
12 was a failure to comply with the law. In fact, Breckenridge issued  
13 a check for \$320,000.00 on the day of the foreclosure sale to  
14 purchase the home which is evidence that Defendants failed to  
15 comply with §2924m(e)(1) by opening up the opportunity to eligible  
16 bidders to buy the property. (Plaintiff's Initial Disclosures,  
17 Dckt. 70, Number 26; Receipt of funds from Breckenridge paid  
18 \$320,000 on June 15, 2023).

19       On the contrary, Defendants are correct that there is no  
20 affirmative duty to open up bids or advertise or say more than is  
21 stated in the law. However, the law makes clear that this is a  
22 notice to eligible bidders and Defendant's express notice  
23 indicating there was a "winning bid" resulting in a final sale runs  
24 counter to the legislative intent of the law. More specifically,  
25 the defective notice did not comply with the conditions set-forth  
26 by Cal. Civ. Code §2924m, but, only served to gain financial  
27 advantage for the Defendants. As such, this is defective notice to  
28

1 eligible bidders that failed to comply with §2924m and as a result,  
2 the foreclosure sale never finalized.

3       **B. UNDER CALIFORNIA CIVIL CODE §2924m(c) (2) ,THE FORECLOSURE**  
4 **SALE IS VOID FOR VIOLATION OF THE AUTOMATIC STAY.**

5       California Civil Code §2924m(c) now controls when a  
6 foreclosure sale is "deemed final." The term "deemed final" is  
7 referring to the point in time in which equitable title transfers  
8 from the mortgagor/homeowner to the buyer and the sale is  
9 considered completed, thereby leaving only the necessary  
10 formality of perfecting the deed by recording it. This new law is  
11 responsive the *California Senate Bill 1079* enacted to promote  
12 owner-occupant buyers, even offering tenant bidders the right of  
13 first refusal with the main goal being to prevent corporations  
14 from buying up single family residents in bulk. As a result, the  
15 bankruptcy courts process for cases under California Civil Code  
16 §2924h(c), which allowed the sale to be finalized at the point of  
17 the pre-petition foreclosure sale and the post-petition  
18 perfecting of the sale via California's Relation Back Doctrine is  
19 over.

20       In re Hager, establishes that Cal. Civ. Code §2924m  
21 prevails over Cal. Civ. Code §2924h as to when the sale is deemed  
22 final. The major difference between the two laws is that *Cal. Civ.*  
23 *Code* §2924h allowed for the finalization of a foreclosure sale to  
24 happen immediately upon the acceptance of the highest bid and the  
25 now controlling law, Cal. Civ. Code §2924m has specific conditions  
26 that are required before the foreclosure sale can be finalized  
27 where there is a corporate bidder. As discussed, this creates the  
28

1 most significant distinction in that Cal. Civ. Code §2924m does not  
2 provide for California's Relations Back Doctrine to come into play  
3 and aid in finalizing a pre-petition foreclosure sale post-petition  
4 as will be discussed further below in relation to equitable title.

5 In contrast, Cal. Civ. Code §2924h, has allowed a trustee's  
6 deed to be recorded, thus perfected post-petition and relate back  
7 to the pre-petition sale under certain circumstances. This cannot  
8 happen with a finalization under Cal. Civ. Code §2924m because it  
9 would be relating back to a mere irrevocable bid/offer not yet  
10 accepted; in other words, an incomplete sale since finalization  
11 occurred pre-petition. This means that the perfection of a sale is  
12 possible by procedure alone, but ineffective because the  
13 foreclosure sale as it stands, is in violation of the automatic  
14 stay.

15 Additionally, because the notice and bidding process requires  
16 non-owner-occupant bidders to open up the possibility of extending  
17 the time allotted to finalize the sale, the foreclosure sale  
18 remains incomplete post-petition. As a result, this would make the  
19 pre-petition sale void under Cal. Civ. Code §2924m because "instead  
20 of the foreclosure sale being final at the drop of the auction  
21 hammer, now the sale is not final, and the trustee's deed not  
22 recordable, for weeks following the sale under fairly common  
23 circumstances" In re Hager. "By this time, Debtors had already  
24 filed for bankruptcy protection. The automatic stay was in effect,  
25 thus finalizing the sale on or after that date violates the stay.  
26 Any violation of the stay is void and without effect". *In re*  
27 *Sanders*, 198 BR. at 328 (citing In re Stringer, 847 F. 2 549 (9<sup>th</sup>

1 Cir. 1988); In re Schwartz, 954 F 2d (9<sup>th</sup> Cir. 1992); In re Kroger,  
2 88 BR. 238, 241 (BAP. 9<sup>th</sup> Cir. 1988)). Therefore, under Cal. Civ.  
3 Code §2924m, the foreclosure sale is "void and without effect" for  
4 violating the automatic stay because it was not finalized pre-  
5 petition.

6 Finally, pursuant to 11 U.S.C. 362(a)(3), the foreclosure is  
7 void, of no effect, and the recordation of the trustee's deed  
8 cannot resuscitate the void sale by reliance on a state statute  
9 that would relate back to a time when it would not have been  
10 prohibited [under Cal. Civ. Code 2924h]. Sanders, 198 B.R. at  
11 329. Because the sale became "final" under Cal. Civ. Code  
12 2924m(c)(4) post-petition, it is void. Cal. Civ. Code 2924h,  
13 cannot be used to finalize an incomplete sale to a time before  
14 the automatic stay arose. As such, the foreclosure sale is void.

15 In conclusion, the foreclosure sale is not finalized, the  
16 foreclosure sale is not perfected, the foreclosure sale in  
17 violation of the automatic stay, therefore, the foreclosure sale is  
18 void ab initio.

19 **C. PURSUANT TO CALIFORNIA CIVIL CODE §2924m(f), EQUITABLE**  
20 **TITLE REMAINS WITH THE PLAINTIFF AS THE MORTGAGOR, UNTIL THE SALE**  
21 **IS FINALIZED, THEREFORE, IT IS PROTECTED AS PART OF THE BANKRUPTCY**  
22 **ESTATE.**

23 California Civil Code §2924m(f) provides that title remains in  
24 the mortgagor or trustor until the "sale is deemed final as  
25 provided in this section." In this case, Plaintiff filed bankruptcy  
26 on the day of the foreclosure sale. As such, there was no finalized  
27 sale and therefore, her equitable title became part of her  
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1 bankruptcy estate to be protected. This is significant as related  
2 to the body of case law relied up by the federal courts in its  
3 interpretation and application of California's foreclosure laws  
4 which over decades, can be broken down simply into three phases.

5 **1. The Traditional View - 11 U.S. Code § 549**

6 11 U.S. Code § 549 - Post-petition transactions (a) Except as  
7 provided in subsection (b) or (c) of this section, the trustee may  
8 avoid a transfer of property of the estate.

9 Prior to 1993, citing from In re Garner, 208 B.R. (B.A.P. 9<sup>th</sup>  
10 Cir. 1997), In re Walker, 861 F 2d 597 (9<sup>th</sup> Cir. 1988) a third party  
11 purchased real property in a non-judicial foreclosure sale  
12 conducted after bankruptcy petition had been filed. The debtor  
13 recorded a notice of the petition before the purchaser recorded a  
14 deed of sale. Based on section 549 (c), the Walker court held that  
15 because the notice of bankruptcy had recorded before the sale deed,  
16 the sale could be avoided. Id 861 F 2d at 600.

17 Moreover, in expanding on this reasoning and interpretation,  
18 In re Williams, 124 B.R. 311 (Bankr. C.D. Cal 1991) the foreclosure  
19 sale occurred before the bankruptcy petition was filed. However,  
20 the debtor filed bankruptcy and recorded notice of the filing  
21 before the sale deed recorded. Because the notice of filing was  
22 recorded first, the recordation of the sale deed was avoidable  
23 under section 549 and the purchase was rendered unperfected. Under  
24 the then California law, as then in effect, the rights of the  
25 purchaser of the property for value whose property was unperfected  
26 would be void as against a subsequent bona fide purchaser of the  
27 property for value whose interest was perfected on the petition



1 date. 11 U.S.C. Section 544(a)(3) 124 B.R. at 314-15. See also In  
2 re Jewett, 146 B.R. 250 251-52 (9<sup>th</sup> Cir. BAP 1992).

3 Finally, these cases supported that a pre-petition sale and  
4 post-petition recording was avoidable under Section 549 and the  
5 sale was rendered unperfected where a Debtor seeks bankruptcy  
6 protection before the sale deed was recorded.

7 **2. Historically, California Civil Code Section 2924h was**  
8 **amended in an attempt to deal with this problem of recording being**  
9 **void post-petition.**

10 As amended in 1993, California Civil Code Section 2924h  
11 provides, in pertinent part, as follows:...the trustee sale shall  
12 be deemed final upon the acceptance of the last and highest bid,  
13 and shall be deemed perfected as of 8:00 a.m. on the actual date of  
14 sale if the trustee's deed is recorded with the fifteen calendar  
15 days after the sale.

16 Moreover, and to date, the amended statute has been construed  
17 in two reported bankruptcy cases: In re Sanders, 198 B.R. 326  
18 (Bankr. S.D. Cal. 1996). Here, the bankruptcy petition was filed  
19 and the foreclosure sale conducted on the same day; the petition  
20 was filed first-at 9:06 a.m.. The sale deed was recorded the  
21 following day. The secured creditor contended that, because the  
22 deed was recorded within the fifteen days of the sale, pursuant to  
23 section 2924h, of the California Civil Code, perfection should be  
24 deemed to have occurred at 8:00 a.m. and thus, prior to the filing  
25 of the bankruptcy petition. The Sanders court rejected this  
26 contention, reasoning that the post-petition sale was void. See In  
27 re Shwartz, 954 F. 2 d 569 (9<sup>th</sup> Cir. 1992). An invalid sale could  
28

1 not be rendered valid by a presumption imposed by state law as to  
2 when the perfection would be deemed to have occurred. 198 B.R. @  
3 328-29.

4 Additionally, the court relied on In re Engles, where the sale  
5 took place first at 11:02 a.m. The bankruptcy petition was filed  
6 four minutes later at 11:06 a.m. No notice of the bankruptcy was  
7 recorded. No sale deed was issued and thus none could be recorded.  
8 The foreclosure sale trustee refused to issue a deed after he  
9 learned of the bankruptcy filing for fear that it would violate the  
10 automatic stay. Thus, at the time of the filing, the debtor held  
11 only bare legal title to the property. The purchaser contended that  
12 bare legal title was of no value to the estate. As a result, relief  
13 from the automatic stay should be granted so that the foreclosure  
14 sale could be perfected. The debtor, on the other hand, contended  
15 that, because the sale was not recorded within fifteen days of the  
16 sale, the sale should not be deemed final until the deed was  
17 perfected. In re Engles, 193, B.R. 23 (Bankr. S.D. Cal. 1996)

18 In their decision, the Engles court agreed with the purchaser  
19 and disagreed with the debtor. It rejected the debtor's contention  
20 that the sale was not final until perfected based on the plain  
21 language of the statute. The Engles court agreed with the  
22 purchasers that the estate held only bare legal title to the  
23 property and that this was of no substantial value.

24 Finally, In re Garner agreed with the Engles court that the  
25 plain language of section 2924h(c) provides that the sale is final  
26 when the highest and last bid is accepted. Thus, in this instant  
27 case, as in Engles, the foreclosure sale was final when the  
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1 petition was filed. In re Bambensee-Wong, 248 B.R. 820 (B.A.P. 9<sup>th</sup>  
2 Cir. 2000) held that "it is clear that the relation back effect of  
3 California Civil Code Section 2924h operated to perfect the  
4 trustee's sale on the action date of the sale. Because this date  
5 preceded the debtor's petition, relief from the automatic stay was  
6 proper".

7 In conclusion, like Defendants, these cases of the past,  
8 relied on Section 2924h, which reasoned that the pre-petition sale  
9 was final at the non-judicial foreclosure sale, where a debtor  
10 files bankruptcy before the recording because the debtor holds only  
11 "bare legal title", but this is no longer the law.

12 **3. Modernly, California Civil Code §2924m(f) provides that**  
13 **title remains in the mortgagor or trustor until the sale is deemed**  
14 **final as provided in this section.**

15 California Civil Code Section 2924m(f) and (h) include the  
16 specific provisions which address the status of the title to the  
17 property pending the running of the applicable period for which a  
18 sale is statutorily deemed final stating:

19 (f) Title to the property shall remain with the mortgagor  
20 or trustor until the property sale is deemed final as  
provided by the section.

21 (h) This section shall prevail over any conflicting  
22 provisions of Section 2924(h).

23 Under California Civil Code §2924m, where a corporation is the  
24 highest bidder of the day, the sale is not finalized pre-petition.  
25 Instead, the law creates conditions. Yet, the conditions that  
26 trigger finalization where adequate posting occurs can only happen  
27 under state law alone absent a bankruptcy filing. Where there is  
28

1 federal bankruptcy protection enacted by a debtor filing bankruptcy  
2 before the fifteen window occurs, the court should look to case law  
3 prior to code section 2924h because the new law explicitly  
4 addresses and changes everything under the new the law and based  
5 upon the legislative intent of the enactment.

6 Moreover, under California Civil Code Section 2924m,  
7 finalization of the sale is at most fifteen days after the bidding  
8 takes place at the non-judicial foreclosure sale. Where a debtor  
9 files bankruptcy before the fifteen window, the sale is avoidable  
10 under 549 (c) as was determined In re Walker, 861 F 2d 597 (9<sup>th</sup> Cir.  
11 1988; In re Williams, 124 B.R. 311 (Bankr. C.D. Cal 1991); In re  
12 Jewett, 146 B.R. 250 251-52 (9<sup>th</sup> Cir. BAP 1992). As such, the  
13 reasoning the court relied upon as the reasoning for the old law in  
14 In re Engles, In re Garner and In re Bebensee-Wong as related to  
15 "bare legal title" held in a debtor's estate at the point of filing  
16 are distinguishable from the new law.

17 Additionally, the case law prior to Section 2924m courts  
18 reasoned that because the sale was final on the actual date of the  
19 non-judicial foreclosure sale in which a highest bidder prevailed,  
20 that the debtor had only bare legal title at the point of filing  
21 bankruptcy after the sale, thus recording was free to related back  
22 to the pre-petition sale. Under in Cal. Civ. Code §2924m, there is  
23 no relations back provisions applicable for obvious reasons.

24 *California's Relation Back Doctrine* is a judge-made law, a  
25 legal fiction so to speak, that enables a transaction or occurrence  
26 related to a complaint to overcome the statute of limitations by  
27 relating it back to the original complaint. In perfecting a sale  
28

1 post-petition; where the sale is final pre-petition, the case  
2 requires only the formality of recording the trustee's deed. The  
3 federal bankruptcy court has determined that under Cal. Civ. Code  
4 §2924h, which is the applicable law related to perfecting a sale,  
5 that the deed may be recorded post-petition for a pre-petition  
6 foreclosure sale relating back to the original sale as long as it  
7 is recording within 21 days. On the contrary, the plain meaning of  
8 the language in the new law is clear and explicit where it relates  
9 to equitable title until a corporation adheres to the conditions  
10 set forth to finalize a sale. As such, the reasoning for allowing  
11 a recording to related back no longer exists.

12 In evaluating the plain meaning of this section the law makes  
13 a very clear and explicit claim as to who holds title to the  
14 property until a sale is final. This is because the sale is not  
15 final at the drop of a hammer on the sale date, but can only  
16 finalize for a corporate buyer after conditions are met. Where a  
17 bankruptcy petition is filed prior to these conditions being met,  
18 the sale is avoidable under Section 549 and void for violating of  
19 the automatic stay.

20 Moreover, in this instance the remedy should be that a creditor  
21 can move for a relief of stay after establishing compliance with  
22 §2924m(e)(1). This, while demonstrating that the debtor is acting  
23 in bad faith by filing bankruptcy and/or has no income, lack of  
24 insurance, lack of equity and cannot afford to retain their home  
25 where relief would likely be granted to proceed with the pre-  
26 petition foreclosure sale. This can be easily accomplished inside  
27 of a bankruptcy case and will allow for a capable debtor suffering  
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1 financial and even emotional hardships that may have caused their  
2 delay in filing to save their homes.

3 Finally, the distinction here is that Plaintiff brought her  
4 equitable title and home as part of the bankruptcy estate to be  
5 included under bankruptcy protection within a day of the foreclosure  
6 sale to a corporation. She does have income, insurance and ability  
7 to save her home. She is not acting in bad faith and has been  
8 subjected to the trauma and desperation of wrongfully losing her  
9 home to experienced corporate Defendants that are expertly skilled  
10 at acquiring foreclosures from unsophisticated debtors.

11 **D. DEFENDANT CANNOT MEET THE BURDEN TO CLAIM BONA FIDE PURCHASER**  
12 **STATUS.**

13 Claiming a bona fide purchaser status when there is an adverse  
14 interest requires proof that there was no notice of any kind that  
15 an adverse interest existed. "The general rule places the burden of  
16 proof upon a person claiming bona fide purchaser status to present  
17 evidence that he or she acquired interest in the property without  
18 notice of the prior interest." (\*108 Gates Rubber Co. v. Ulman  
19 (1989) 214 Cal.App.3d 356, 367, fn. 6, 262 Cal.Rptr. 630; accord,  
20 First Fidelity Thrift & Loan Assn. v. Alliance Bank (1998) 60  
21 Cal.App.4th 1433, 1442, 71 Cal.Rptr.2d 295.) "The subsequent  
22 purchaser or encumberer has the burden of showing lack of notice."  
23 Claremont Terrace 3 Homeowners' Assn. v. United States, 146 Cal.  
24 App. 3d 398, 194 Cal. Rptr. 216 (1st Dist. 1983) In this case,  
25 Defendant cannot meet this burden. Defendant, Breckenridge is a  
26 corporation established in 2016 to acquire distressed homes. The  
27 understanding and implementation of California Civil Code §2924m

1 conditions required to finalize a mere bid into a sale is expected.

2 Moreover, Defendant Breckenridge is a corporation that sets out  
3 to acquire property from financially devastated debtors, therefore,  
4 they must fully know and adhere to the process of acquiring such  
5 distressed properties. Unlike the unsophisticated debtors that they  
6 remove from their homes for financial gain, they can afford adequate  
7 legal counsel to advise and protect them.

8 More significantly, Breckenridge must know that given the  
9 situation of a bankruptcy filing, there are competing interests  
10 occurring which should alert them to investigate the sale. Feigning  
11 ignorance as an innocent buyer is insulting especially being made  
12 award of the filing of the bankruptcy and continuing to sell the  
13 home after the automatic stay went into effect.

14 Finally, in an attempt to prevent corporations from buying up  
15 homes, California demanded protections be put in place through SB  
16 1079, so that creditors and corporations play fair in this  
17 tumultuous economy. As such, given the circumstances of this case,  
18 Defendant pleading ignorance as a bona fide purchasers is dubious  
19 at best.

20 **IV. CONCLUSION**

21 WHEREFORE, Debtors pray that the Court deny this Motion for  
22 Summary Judgment.

23  
24 Dated: December 31, 2024

Law Offices of Peter G. Macaluso

25 By: /s/Peter G. Macaluso  
Peter G. Macaluso  
26 Attorney for Plaintiff  
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